

### **REMARKS**

Re-examination of the application is requested under 35 USC 132 in view of the amendments above and the remarks which follow.. Claims 1-7 are presented for examination, a total of 7 claims. No new fee for the additional claims is required.

### **PRIORITY**

A certified copy of the priority document is being ordered and will be forwarded to the Examiner's attention as soon as it has been received.

### **DRAWINGS**

Responsive to the Examiner's Objection, the Drawings are proposed to be corrected by labeling Figures 13 and 14 with the legend "Prior Art" per MPEP 608.02(g). These figures are discussed in the "Description of the Related Art" section of the present application at page 3, lines 13 through 19. Each of these figures is referred to at lines 21 through 23 at page 15 in the specification as a "conventional example". Applicant has proposed to amend the specification to more clearly designate these figures as "prior art".

Applicant declines to label Figure 15 as "prior art". At page 15, Figure 15 is identified as a "conventional example" not as prior art. Moreover, reference to Figure 15 first occurs at page 9, line 25 under the heading "Summary of the Invention" The specification recites at page 9 and continuing to page 10 that "one could envisage producing a bag with three heat sealable parts..." following description of a bag with two relevant heat sealable parts. This appears to be an extension of the present invention and is not excluded by claim 1 as presently drafted. There is mention at page 10 that such a bag would have to be cut versus torn and that it would have to be tipped all the way up to expel its contents which could make the refilling operation "difficult". Essentially the same description is repeated under the "Description of the Preferred Embodiments" section of the specification at page 26, line 16, through page 27, line 4. However,

there is no admission of and no other basis for assuming that Figure 15 and its related description is prior art.

### **SPECIFICATION**

The Examiner has pointed out the deficiencies of the Abstract and applicant is submitting a new Abstract which is believed to be in compliance with 37 CFR 1.72 and the suggestions in MPEP 608.01(b).

### **OBJECTION TO THE DISCLOSURE**

The Examiner has objected to the disclosure as being unclear regarding the status of Figure 15 of the Drawings as prior art. Applicant has explained the content of the specification regarding Figure 15 as discussed above and has amended the Drawing and specification to clarify that Figure 15 is not prior art.

### **REJECTION UNDER 35 USC 103**

Claims 1-4 stand rejected under 35 USC 103(a) as unpatentable over the "Admitted Prior Art in Fig. 15" in view of Berman and JP 9-353217 (hereafter "Japan"). For the reasons noted above, it is believe improper to consider Figure 15 as prior art and the arguments presented herein will assume Figure 15 should not be considered as prior art for purposes of examination as the Examiner has expressly done.

Berman is a design patent which discloses a drawing of a flexible, rectangular bag which appears to be heat sealed on four sides and has an opening in one side for the ingress and/or egress of liquid. Japan discloses a bag wherein the top seal is a diagonal seal across the width of the bag. By using scissors to cut diagonally from either the left or right side of the bag a pouring mouth of the desired size can be formed. The Japan reference is discussed in the instant specification at page 2, lines 11 through 20 and at page 5, lines 1 through 26. It is noted that Japan teaches making a diagonal cut (15, 16 (a & b)) to form the mouth. When the mouth is formed by a diagonal cut it is formed substantially at an angle to the machine direction of the

sheet from which the bag is made and cannot be made by tearing with the fingers. Similarly, when a diagonal mouth is formed, it requires the bag to be longer so that the contents of the bag do not fall out when the mouth is cut. Therefore, the bag must be made longer to accommodate the diagonal mouth and is more prone to buckling when handled for storage or pouring.

In contrast to Japan, the bag of the present invention employs a combination of a top seal along the top edge and a diagonal seal running from the top to a side edge. The bag is torn substantially parallel to the top seal so it can be torn by the fingers. Because the mouth is formed substantially parallel to the top the bag does not have to be made longer to prevent inadvertent spilling when the mouth is formed.

It is noted that the Examiner has taken Official Notice that it is old to heat seal the tops, sides and bottoms of bags. Applicant does not disagree that it is generally known to heat seal bags, however, that is not an admission that all configurations or combinations of heat sealing is known. As in the present case, the combination of heat seals and the pattern they form is not known. Moreover, the advantageous results obtained are not appreciated by the prior art (Berman and Japan).

In contrast to the Examiner applying Figure 15 as prior art, it is incumbent on the Examiner to recognize that the seal pattern of Figure 15 is both novel and would not have been obvious to one skilled in the art at the time the invention was made. Far from being prior art, the embodiment shown in Figure 15 is believed patentable in the present application, though perhaps less preferred for some applications.

The Examiner has applied Figure 15 as prior art without basis and, as noted above, applicant believes this is contrary to the facts. Moreover, in the first four lines of page 4 of the Office Action mailed 10/22/03 the Examiner states that in view of Official Notice taken it would have been obvious to put powder or lumpy chemicals into the modified bag of "Art", "as that is what that structure is intended to be used for". If by "that structure" the Examiner intends to refer to the structure of Figure 15, it is not clear where it is disclosed in the prior art that it is intended to be so used. Certainly that is not inherent in Figure 15 and such teaching can only be gleaned

from applicant's own disclosure, an approach not supported by the facts and, as such, is precluded by 35 USC.

It is believed that the claims are now in condition for allowance and favorable consideration is respectfully requested.

The Commissioner is hereby authorized to charge any fee required for this filing, including but not limited to the additional claims fee, to Deposit Account No. 50-0231 as follows:

CLAIMS AS AMENDED					
Claims	Current Number Filed	Highest Number Previously Paid For	Number Claims of Extra	Rate	Amount Due
Total Claims (37 CFR 1.16(c))	7	- 20=	0 x	\$18.00	\$0
Independent Claims (37 CFR 1.16(b))	1	- 3 =	0 x	\$86.00	\$0
Multiple Dependent Claim(s), if any (37 CFR 1.16(d))	=		NONE		
TOTAL CLAIMS FEE DUE				\$0.00	

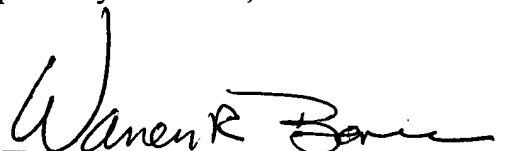
Respectfully submitted,

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**MARKED UP VERSION SHOWING CHANGES MADE:**

**IN THE SPECIFICATION**

**On Page 15, paragraph 12, line 21:**

Fig. 13 is an explanatory drawing of a ~~conventional example~~ prior art bag;

**On Page 15, paragraph 13, lines 22 and 23:**

Fig. 14 is an explanatory drawing showing the ~~conventional example~~ prior art bag of Fig. 13 after opening; and

**On Page 15, paragraph 14, lines 24 and 25:**

Fig. 15 is an explanatory drawing of another ~~conventional example~~ according to the present invention having two diagonal seals.

**IN THE ABSTRACT**

Please cancel the present Abstract of the Disclosure and submit the following Abstract of the Disclosure therefore:

~~An object of the present invention is to provide a bag which enables refilling of a container from the bag to be carried out smoothly, without the contents coming out of the pouring mouth all at once and without the bag losing its shape, and the pouring mouth to be set to a certain specific size; which eliminates the need of a special sealing device; and which is strong. Further, with the bag according to the invention, the refilling can be carried out easily, without seissors or the like being required for forming the pouring mouth, the overall shape of the bag does not have to be made long in the vertical direction; and without any of the contents remaining in the bag during pouring. In the bag of the present invention, heat sealed parts 5 and 6 are formed at the right and left side edges and the bottom is closed up; at the top, an upper heat sealed part 8 is formed along the upper edge portion, and an inclined heat sealed part 9 is formed diagonally to extend from the upper heat sealed part 8 to one of the left and right side heat sealed~~

parts 5 and 6; when the bag is opened by ripping along the upper edge portion from a notch 10, the upper heat sealed part 8 is ripped away, and part of the inclined heat sealed part 9 remains behind on the main part of the bag.

The present invention relates to a bag constructed for holding and dispensing materials, such as liquids or solids. The bag is made of thermoplastic material and is heat sealed at the right and left edges and closed up at the bottom. In addition the bag is heat sealed across the top and also sealed diagonally from the top to a side edge to provide the advantages of the invention. The mouth of the bag is opened by partially tearing across the upper portion of the bag from a starting notch place along one edge opposite the diagonal seal so that part of the diagonal heat seal remains integral with the main part of the bag. Placement of the top and diagonal seals helps to support the open mouth of the bag and helps maintain its shape for easy handling and controlled pouring.